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In The

SUPREME COURT of the UNITED STATES

October Term, 1982

WAYNE POMANOWSKI,

Petitioner,

vs.

MONMOUTH COUNTY BOARD OF REALTORS, a New Jersey Corporation; Monmouth County Multiple Listing Service; New Jersey Association of Realtors; National Association of Realtors; William G. Kircher; Charles Darrah,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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QUESTIONS PRESENTED

I.

Can a state licensed real estate broker be barred from interstate and intrastate commerce by reason of his refusal to join the trade association that controls such commerce?

II.

May a State deviate from Federal law in an Antitrust matter that affects interstate commerce, where that State's law assures litigants by statute and court decisions that State Antitrust law will be interpreted in harmony with the Sherman Antitrust Act?

III.

When the New Jersey Supreme Court mandates that all licensed real estate brokers must join a trade association as a prerequisite to practicing their profession, has the Court not violated the petitioner's constitutional right of nonassociation, which is protected by the First and Fourteenth Amendments?

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OPINIONS BELOW

The opinion of the New Jersey Supreme Court, on certiorari to the trial court, reversing the judgment for the petitioner was decided May 10, 1982 and it appears at App. 1.

The opinion of the Superior Court, Chancery Division, rendered June 11, 1980 is reported at 175 N.J. Super 212 and appears at App. 32.

The Denial of Petition for Certification and Cross Petition for Certification was decided on May 1, 1979 and reported at 81 N.J. 260.

The opinion of Superior Court, Appellate Division, reversing the granting of summary judgment to petitioner and remanding to the Superior Court, Chancery Division,

rendered February 21, 1979 is reported at 166 N.J. Super. 269 and appears at App. 47.

Opinion of the Superior Court, Chancery Division, granting petitioner's Motion for Summary Judgment, decided July 19, 1977, reported at 152 N.J. Super. 100, reproduced at App. 54.

JURISDICTION

The jurisdiction of this Court is invoked under 28 USC 1257 (3):
the Supreme Court of New Jersey rendered its decision on May 10, 1982 (App. 1) and this Petition for Writ of Certiorari is timely filed thereafter.

CONSTITUTIONAL PROVISION INVOLVED

This case involved the Commerce Clause of the United States Constitution which

provides as follows:

> The Congress shall have power
> "To regulate commerce ...
> among the several states..."
> Sec. 8

This case also involves the Fourteenth Amendment to the Constitution, freedom of nonassociation:

> "....No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

FEDERAL STATUTES INVOLVED

This case involves the Sherman Antitrust Act 15 USC 1 et seq., the pertinent portions of which are reproduced at App. 70.

STATE STATUTES INVOLVED

This case involved the New Jersey Antitrust Act which Act specifically provides that the State Act is patterned after the Federal Act and must be interpreted in conformance with the Sherman Act and Federal Court decisions. The State Act is found at N.J.S. 56:9-1, et seq and is reproduced at App. 67.

STATEMENT

Petitioner, Pomanowski, is a New Jersey licensed real estate broker.

Respondent Monmouth County Multiple Listing Service (MCMLS) is a committee of the Monmouth County Board of Realtors (MCBR).

The Monmouth County Multiple Listing Service places the listings of each participating broker in the hands of all brokers in the area who are also participants in the service. App. 36

The trial judge found that the MCMLS " . . controls at least 50% of the residential real estate business of the County." App. 39

The trial judge further found that 84% of the brokerage firms in the County were controlled by MCMLS. App.

Pursuant to the Rules of the MCBR and the New Jersey Association of Realtors and the National Association of Realtors, a broker is denied access to the Multiple Listing Service unless he is a member of the aforementioned three organizations.

The petitioner resigned from the Monmouth County Board of Realtors, the

New Jersey Association of Realtors and National Association of Realtors and was immediately denied access to the Monmouth County Multiple Listing Service.

Petitioner could not compete, his sales force left his office, and Petitioner could no longer make a living. App. 74

This suit was instituted claiming that conditioning participation in the Monmouth County Multiple Listing Service upon membership in the Monmouth County Board of Realtors, the New Jersey Association of Realtors and the National Association of Realtors was a violation of the New Jersey Antitrust Act in that the Defendants had restrained trade and conspired to restrain and monopolize trade.

The trial judge granted Summary Judgement for Petitioner. App. 54

The Appellate Division reversed and remanded, agreeing with the trial judge that the "rule of reason" was the applicable law (App 50) but remanded for a plenary hearing. App. 53

At the lengthy plenary hearing Plaintiff presented testimony that the MCMLS controlled at least 50% of the applicable market.

Brokers in Monmouth County are involved in interstate commerce as evidenced by their affiliations with various nationwide real estate franchises whose purpose is to refer customers from state to state.

The trial judge found that the Petitioner's denial of access to the Monmouth County Multiple Listing Service violated the New Jersey Antitrust Act and entered judgment in favor of Petitioner.

The New Jersey Supreme Court granted direct certification (87 N.J. 426 (1981).

The Supreme Court held that "Absent any showing of a true denial of access, the defendants should not be required to dismantle or significantly alter a trade association that provides procompetitive benefits in excess of any anticompetitive effects engendered. Accordingly, we conclude that in conditioning MCMLS access on MCBR membership, defendants have created a reasonable restraint of trade -- one not in violation of our Antitrust Act." App. 28

The New Jersey Antitrust Act is patterned after the Sherman Antitrust Act (15 USC 31 et seq).

The New Jersey legislature specifically provided that "This act shall be construed in harmony with judicial interpretations of comparable Federal antitrust statutes and to effectuate, insofar as practicable, a uniformity in the laws of those states which enact it." NJS 56:9-18. App. 67

The petitioner had every reason to believe that his rights would be protected equally under the New Jersey Antitrust Act and the Sherman Antitrust Act. As a result of this statutorily based reliance, Petitioner chose the State of New Jersey as his forum. The Supreme Court of New Jersey has denied him those rights.

ARGUMENT

I.

THE NEW JERSEY SUPREME COURT HAS EXCLUDED A NEW JERSEY LICENSED REAL ESTATE BROKER FROM INTERSTATE AND INTRASTATE COMMERCE BECAUSE OF HIS REFUSAL TO JOIN A TRADE ASSOCIATION.

The matter before the Court, although it appears to be only the ruling of one State Supreme Court, has far reaching implications in a national trend of antitrust thought. If such a trend continues, every licensed real estate broker in every state may have to hold membership in the local, State and National Realtor trade organizations, or face exclusion from the intrastate and interstate commerce of their profession.

The New Jersey Supreme Court, under the "rule of reason", decided, based on incorrect figures chosen by the court below, that the pro-competitive benefits of Realtor Board sponsorship of the Monmouth County Mulitple Listing Service out-weighed the negative restraint of excluding this class of State licensed non trade association members from the Multiple Listing Service (M.L.S.) This decision, in effect, establishes the Realtors as the lawful licensing and regulatory authority, challenging the Federal right of Congress to regulate such interstate commerce and stands foursquare against half a century of prevailing Federal court opinions.

This is not an issue of only one county. The Realtors control and preclude non Realtors in 27 of the state's 35 Multiple Listing Services.

We contend this movement to exclude all non trade association members from intrastate and interstate commerce is part of a nationwide plan.

In the national public interest, the U.S. Supreme Court should examine the trade association's growing control over the real estate industry and the negative effects on competition of such Realtor control.

A Realtor and a licensed real estate broker are not synonomous terms. A Realtor is a licensed real estate broker who subscribes to a national code of ethics, and is a member in good standing of the local, state and national trade associations.

If a licensee meets all of the previously mentioned qualifications, the National Association of Realtors will allow the broker to display the word "Realtor" in conjunction with his name or the firm name. All real estate brokers are not Realtors.

Wayne C. Pomanowski, the petitioner, is one member of this class of duly licensed brokers nationwide, who does not maintain trade association status. The penalty imposed on the petitioner for this non association has been exclusion from the intrastate and interstate commerce in the real estate industry. The Monmouth County Board of Realtors (M.C.B.R.) owning the subsidiary Committee, Monmouth County Multiple Listing Service (M.C.M.L.S.), is one of the state's

largest multiple listing services having in 1977 260 Realtor members (brokers). App. 38

In 1978, the M.C.M.L.S. had a residential sales volume of $262,571,872.24, processing 10,373 residential listings.

The New Jersey Attorney General testified that the Realtors controlled 70% of the market of residential listings. App. 37

The trial judge concluded that the M.C.B.R., through M.C.M.L.S., controls a not insubstantial segment of the real estate market in Monmouth County. App.

The denying of petitioner of access to M.C.M.L.S. has the effect of petitioner foreclosing his ability to successfully compete in the real estate business. App. 74

Moreover, the proposed justification for the exclusion rule being the amount of support given to M.C.M.L.S. by the M.C.B.R., New Jersey Association of Realtors and National Association of Realtors does not outweigh the damage to the petitioner in that Realtor membership is totally unrelated to the operation of M.C.M.L.S.

II.

THIS COURT SHOULD GIVE DIRECTION TO A STATE COURT OF LAST RESORT WHERE THE STATE COURT FAILS TO CORRECTLY APPLY PREVAILING FEDERAL OPINIONS TO ITS STATE LAW.

"This act shall be construed in harmony with ruling judicial interpretations of comparable Federal antitrust statutes and to effectuate, insofar as practical, a uniformity in the laws of

those states which enact it."

New Jersey Antitrust Act N.J.S. 56:9-18.

The New Jersey Legislature, while using the Sherman Antitrust Act as a model, recognized it could not preempt Federal law. The respondent in this matter will, no doubt, contend this is a state statute decided in a state court, with no Federal issue present.

However seemingly meritorious this argument may be, the purpose of that ancillary statute is clear. When any state court decisions create a conflict with Federal case law covering identical statutes, then such state decisions stand as a challenge to the Federal authority.

The New Jersey Supreme Court has affirmed their obligation to test antitrust issues not only under the State Antitrust Act, but also under the Sherman Antitrust Act. State of New Jersey v. Lawn King, 84 N.J. 179 (1980).

In determining the jurisdictional question in this matter, the court can be guided by Orr v. Orr 99 S.Ct. 1102 (1979) and Delaware v. Prouse 99 S.Ct. 1391 (1979). This court held that where a state court does not decide against an appellant on an independent state ground, but deeming the federal question to be before it, actually decides that question adversely to the federal right asserted, the Supreme Court has jurisdiction to review the judgment if it is final.

In Delaware, id., this Court held that if the judgment is a final judgment, this Court cannot refuse jurisdiction because the state court might have based its decision upon an independent and adequate non federal ground.

In the Pomanowski decision, the court below does not deny such federal issues are present, speaking often of their legislative mandate to be in harmony with federal decisions and utilizing several federal citations. Stating in their search for Federal opinion that the U.S. Supreme Court has "rendered no decision directly on point", the N.J. Court rested its decision on State of Iowa v. Cedar Rapids Board of Realtors 300 NW 2d 2d 127 (1981) which is not in harmony

with prevailing Federal opinion.

The State Attorney General in Cedar Rapids, op. cit., failed to show the Realtors' monopoly of the relevant market, showing only a 10.4% control of the market, the State further admitted that there was extensive cooperation between M.L.S. members and non M.L.S. members. The Iowa Competition Act is also patterned after the Sherman Act along with its ancillary statute requiring harmony with interpretation of Federal statutes. The Iowa case is clearly distinguishable from the case at bar.

The petitioner contends this matter is properly before the Supreme Court for review. The petitioner's right to have Federal opinion prevail is statutory. Zacchini v. Scripps-Howard Broadcasting Co. 97 S.Ct. 2849 (1977) held that where a

state court is guided by Federal interpretation of parallel Federal laws in interpreting its own state law and fails to properly understand such Federal consideration, this Court has jurisdiction to correct such errors.

Where, as here, such harmony is lacking and there is need of Federal interpretation, a petitioner may only turn to the United States Supreme Court for a remedy. If such interpretation by the New Jersey Supreme Court is incorrect, then this Court should give proper direction to the New Jersey Court.

Adding to the seriousness of the lower court decision is this Court's recent opinion in McLain v. Real Estate Board of New Orleans 100 S.Ct. 502 (1980). The Supreme Court held that real estate brokers are involved in

the interstate commerce process. In McLain this Court concluded that one Board of Realtors was involved in interstate commerce.

In the case at bar the record below will reveal that the exclusion of non Realtors existed in 27 of New Jersey's 35 multiple listing services. One must inescapably conclude that with 75% control of the M.L.S. in the State of New Jersey, interstate commerce is affected. Can one possibly conclude that in all of these Raltor controlled transactions within these Realtor controlled M.L.S. not one person sold his house to move to another state; not one title company did business in another state; not one bank had multi-state affiliations? The MCMLS sales volume for this one listing service for one year was in excess of

one quarter of one billion dollars.

Where a state court is guided by Federal interpretations of parallel Federal laws in interpreting its own state law and fails to properly understand such Federal considerations, the U.S. Supreme Court has jurisdiction to correct such errors.

III.

THE DECISION BELOW VIOLATES PETITIONER'S FIRST AND FOURTEENTH AMENDMENT RIGHTS ON NONASSOCIATION.

The court below is bound by its own Act to follow Federal interpretation.

The record below will indicate that the petitioner raised the issue of his constitutional right of freedom of association or, in this case, freedom of nonassociation, protected by the First and Fourteenth Amendments. Although neither the State Appellate Division of the Superior Court nor the trial judge ruled on the merits of the freedom of

association issue, it was raised at the initial trial and appellate level by the petitioner and the Amicus Curiae Attorney General, in Pomanowski v. Mon. Cty. Bd. of Realtors 166 N.J. Super. (1979).

At the heart of the matter is the petitioner's constitutional right to associate or not associate with the Realtor's trade organization, protected by the First and Fourteenth Amendments. There is something fundamentally wrong with a system of justice that compels, absent any affirmative legislative mandate, an individual to belong to or pay dues into an association that he does not choose to join of his own free will.

Speaking clearly for the U.S. Supreme Court in Abood v. Detroit Board of Education

431 U.S. 209, 52 L.Ed. 2d 261, 97 S. Ct. 1782 at page 283, 52 L. Ed. 2d Justice Stewart stated "Equally clear is the proposition that a government may not require an individual to relinquish rights guaranteed to him by the First Amendment, as a condition of public employment."

What the N.J. Supreme Court has said is that if petitioner wishes to to participate in the intrastate and interstate commerce of his chosen profession, which is clearly controlled by the Realtors, then he must be forced to sacrifice his constitutional right of freedom of association or, in this matter, freedom of nonassociation. Without access to such commerce the petitioner is clearly without employment.

The MLS which, now by court ruling, lawfully controls the free enterprise system is not open to all.

In Abood the statute provided for the constitutional right of nonassociation in that if Abood did not want to join the local union he didn't have to wear the union label. However, he would to pay for the economic benefit he derived from their representation of him during contract negotiations.

There is no such status with the Realtor organization. Either you wear the "R" label or you are effectively unemployed.

IV.

A TRADE ASSOCIATION THAT HAS GAINED CONTROL OF THE MARKETPLACE SHOULD NOT BE GRANTED THE POWER TO EXCLUDE OTHERS FROM THAT MARKETPLACE.

There is no other profession in our society where you must be a member of a trade association to participate in any part of our free enterprise system. Established Federal law is to the contrary. Why should the Realtors enjoy this constitutional immunity?

Participation in commerce should not be a benefit for an elite trade group when the Realtors have such dominant market power. Provisions must be made for other equally worthy participants in our free enterprise system.

Multiple listing is our country's current vehicle for residential real estate commerce. The days of the small independent real estate broker, loosely cooperating with other independent brokers with their small supply of listings, are over. M.L.S. is a multi-million dollar

industry involving millions of home sellers, and tens of thousands of licensed real estate brokers involved in a nationwide network of national franchises and multiple listing services. In response to petitioner's voluntary resignation from the Realtors, the court failed to place proper weight on the fact that the petitioner was given a join or be excluded" ultimatum by the MCMLS.

The New Jersey Supreme Court spoke often of the supposed procompetitive benefits that flow from Realtor sponsorship. However, the high court never once spoke of the negative effects that occur when licensed brokers are foreclosed from the market. Therefore, the public's choice of a broker is severely constricted.

The court below has held that this intrastate and interstate commerce is

solely a benefit for Realtors, and that non-Realtors who are state licensed, as fully competent and qualified to serve the public, are not worthy of participation in the uniquely American process of buying and selling houses. Not only are brokers from New Jersey excluded, but also out of state brokers, who have complied with New Jersey's reciprocal licensing laws, and who have legitimate business needs in the New Jersey marketplace.

Recently in People of California v. National Association of Realtors, the State Supreme Court agreed with U.S. vs. Realty Multi-List, Inc., 629 F 2d 1351 (Fifth Circuit, 1980), holding that MLS may not impose the added burden of Realtors dues on licensees. From this disharmony of opinion comes a harmonious plea for a

national antitrust policy on MLS. The court below erred when it held that because the Realtors have worked long and hard to develop a monopoly, they now should be privileged to enjoy their dominant market position of monopoly.

If the holding by the New Jersey Supreme Court is valid, that Realtor sponsorship of MLS is procompetitive, how can an independent MLS survive and even operate at a substantially lower cost than Realtor controlled Boards?

The obvious conclusion is that Realtor dues, paid to local, state and national Realtor organizations, amount to a private tax on the willing and not so willing participants in this network of Realtor controlled MLS' for the sole purpose of increasing the power of such trade associations.

The testimony of Respondent, New Jersey

Association of Realtors', Executive Officer, Robert Ferguson, was that the Realtors' purpose in gaining this tremendous market control over the industry was only to increase membership in the Realtor group.

IV.

THE NEW JERSEY SUPREME COURT ERRED IN ITS BALANCING OF THE NEGATIVE EFFECTS OF RESTRAINT OF TRADE AND THE PRO-COMPETITIVE BENEFITS THAT FLOW FROM REALTOR CONTROLLED MULTIPLE LISTING SERVICES.

In framing their novel approach to antitrust law the N.J. Supreme Court listed several benefits flowing from Realtor affiliation that made the exclusion of petitioner reasonable:

1. Realtor affiliation assures the public of propriety in dealing

with a Realtor controlled M.L.S.

2. Code of ethics
3. Imposes sanctions upon delinquent members
4. Provides facilities for arbitration of disputes and resolution of ethics complaints.
5. Realtors volunteer hours
6. Realtors share some space with M.L.S.

(App. 18-20)

As to the use of the word "Realtor" to assure the public of propriety, the public, and most learned professionals don't even know the difference between a Realtor and a licensed real estate broker.

The code of ethics is completely covered and preempted by the New Jersey License Law.

Non Realtors are governed by an even stricter ethical conduct.

Although the court alluded to the sanctions issue, the trial record is barren as to anyone ever being cast out of the Realtors.

As to the volunteer hours, the Realtors' expert testified that he had no proof that the volunteer hours made the Realtor controlled M.L.S. any better than an independent M.L.S.

The court was silent on the counter-balancing evils that would occur if all licensed brokers could participate in the MCMLS, and silent further on explaining the damage that occurred due to the effective de-licensing of the petitioner and other non-Realtors licensed to do business in New Jersey.

For each dollar the petitioner had to pay in 1977 to gain access to MLS, he had to pay 68¢ into the Realtors' treasury. When one adds the cost of trade association dues for the two sales associates, for each dollar petitioner paid into MLS he would have to pay $1.00 into the Realtors' trade group treasury.

This means for the year 1977 Pomanowski paid over and above the cost of his MLS fee, an additional 100% fee for trade association dues, so as not to be excluded from the commerce of his industry. If he were a large statewide broker with many offices, he would have to pay county dues in any of New Jersey's 21 counties he did business. If he had a large office with many agents he could easily pay 300%, 400% or even 500% more in trade dues than the

cost of the essential MLS.

The effect on part time agents is devastating.

If a large interstate public utility, transmitting energy, refused to sell any power to purchasers, unless these purchasers first agreed to pay a surcharge to the utility trade association equal to 100% of the cost of the power purchased, would the court not sit up in shock at such outrageous conduct. This conduct has been affirmed by the N.J. Supreme Court.

The New Jersey Administrative Code specifically provides at NJAC 11:15-1.23 (c) "Every licensee shall fully cooperate with any other New Jersey licensee, utilizing his customary cooperation arrangements which shall protect and promote the interest of the

licensee's client or principal and which shall not constitute unreasonable practice within the real estate brokerage business...." (emp. added)

The laws of the State of New Jersey mandate this inter-broker cooperation. In spite of this mandate, the court below now sanctions exclusion of non member licensees from access to the MCMLS.

United States v. Realty Multi-Listing, 629 F.2d 1351 (5th Cir. 1980) beyond being the controlling Federal case on extra licensing requirements is also a treatise on the competitive harm of exclusion. Justice Goldberg, with absolute clarity stated, that when such exclusion occurs, both the broker and the public are harmed. Most

importantly, where an MLS creates barriers to entry, beyond the state's regulatory authority, the MLS must make showing that the legitimate needs of MLS require protection in excess of that provided by the state.

The court below accomplished this by some judicially startling fact finding.

The court below used incorrect figures to justify its pivotal conclusion that the Realtor controlled MLS is better. App. 20. Even more judicially shocking is the fact that the court below, now assuming the position of fact finder totally excluded similar testimony dealing with cost efficiency of Realtor Boards. A schedule of correct figures follows.

Pomanowski re-hearing February, 1980	Mon.Cty. M.L.S.	M.L.S. of No. N. J.	Middlesex Cty. M.L.S.
Is MLS a Committee of a Bd. of Realtors ?	yes	no	yes
Is Realtor membership a prerequisite to Joining the MLS?	yes	no	no
Cost of Initiation Fee to MLS	$500.00 [1]	$1300.00 [4]	$500.00
Cost of Realtor Dues for Broker	$200.00 [2]	none	$300.00
Cost of Yearly Broker Dues to MLS	$300.00	$308.00	$480.00
Total Cost to Compete	$520.00	$308.00	$780.00
Number of Counties Covered	[3] One	[5] Six	[7] Three
Cost to Compete per County	$520.00	$ 51.33	$260.00
Cost to Process each Listing	$25.00	$25.00	$25.00

FOOTNOTES

1. The N.J. Supreme Court erred in its fact finding grabbing the erroneous figure of $250. as an entrance fee. This $250. was Pomanowski's Realtor dues in 1977, which are not part of the re-hearing. The correct figure was $500. This $500. fee is also not refundable.

2. This is the correct 1980 cost for a licensed broker to become a "Realtor" in Monmouth County, N.J. The Supreme Court again erred in its fact finding.

3. Monmouth County

4. This fee is 100% refundable depending on your time with the MLS Service.

5. Passaic, Bergen. Warren, Sussex, Essex, Morris

6. The Supreme Court in its fact finding chose to ignore and compare the testimony and facts presented in the re-hearing of Rudolph Grillo, President of Middlesex County Board of Realtors.

7. Union, Middlesex, Somerset

In U. S. v. Topco Associates 92 S. Ct. 1120 405 U.S. 596 31 L.Ed.2d 515 (1972) Mr. Justice Marshall spoke clearly on the prevailing Federal opinion regarding exclusion of American citizens from the free enterprise system. "Antitrust laws in general, and the Sherman Act in particular, are the Magna Carta of free enterprise. They are as important to the preservation of economic freedom and our free enterprise system as the Bill of Rights is to protection of our fundamental personal freedoms. And the freedom guaranteed each and every business, no matter how small, is the freedom to compete - to assert with vigor, imgination, devotion, and ingenuity whatever economic muscle it can muster.

Implicit in such freedom is the notion that it cannot be foreclosed with respect to one sector of the economy because certain private citizens or groups believe that such foreclosure might promote greater competition in a more important sector of the economy." Cf. United States v. Philadelphia National Bank 374 U.S. 321, 371, 83 S.Ct. 1715 1745, 10 L.Ed. 2d 915 (1963)

The opinion in U.S. v. Topco Associates, op. cit. personifies the seriousness with which the U.S. Supreme Court views any effrontery to an entrepreneur's guaranteed right to participate in the commerce of his chosen profession.

Any restraint such as in the case at bar which denies such guarantee must be

subjected to probing examination, and if such restraint of the individual's basic freedom is not overwhelmingly outweighed by a multitude of benefits to competition, the restraint must fail. U.S. v. Realty Multi-List, Inc. ¢@(F.2d 1351 (5th Cir. 1980)

In National Society of Professional Engineers v. U.S. 98 S.Ct. 1355 (1978), this court adhered to the position that the inquiry mandated by the "Rule of Reason" is whether the challenged agreement is one that promotes competition or one that suppresses competition. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition

(38 S. Ct. 243, 97 S. Ct. 2557).

In Silver v. N.Y. Stock Exchange 83 S. Ct.1246 (1963) Mr. Justice Goldberg speaking clearly for the court stated that "antitrust laws serve, among other things, to protect competitive freedom, freedom of individual business units to compete unhindered by the group action of others."

The case at bar is analogous to Silver in that non members were excluded from information that gave them the ability to compete with members. The U.S. Supreme Court rejected this group boycott of non members.

CONCLUSION

It is, therefore, respectfully submitted that the Petition for Writ of Certiorari be granted.

Petitioner hereby reserves his right to demand counsel fees and costs below and in this Court.

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